

suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

**§ 145.730 What information must I provide to the suspending official if I contest a suspension?**

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the SBA may seek further criminal, civil or administrative action against you, as appropriate.

**§ 145.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?**

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to infor-

mation contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

**§ 145.740 Are suspension proceedings formal?**

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

**§ 145.745 How is fact-finding conducted?**

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the SBA agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

**§ 145.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?**

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

**§ 145.755 When will I know whether the suspension is continued or terminated?**

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

**§ 145.760 How long may my suspension last?**

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible pros-

ecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

**§ 145.765 How may I appeal my suspension?**

(a) If the SBA suspending official issues a decision under § 145.755 to continue your suspension after you present information in opposition to that suspension under § 145.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 145.755 or paragraph (a)(1) of this section. However, OHA can reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.